

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**February 10, 2022 at 10:30 a.m.**

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<b>1.</b>	<b><u>21-20225-E-7</u></b> <b><u>MOH-2</u></b>	<b>DONALD JOHNSON</b> <b><u>Michael Hays</u></b>	<b>CONTINUED OBJECTION TO CLAIM OF CARALY JOHNSON, CLAIM NUMBER 2 9-2-21 [65]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on September 2, 2021. By the court's calculation, 60 days' notice was provided. 44 days' notice is required. Fed. R. Bankr. P. 3007(a) (requiring thirty days' notice); Local Bankr. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Hearing on the Objection to Proof of Claim Number 2-1 of Creditor has been continued to April 28, 2022 at 10:30 a.m. by prior Order of the Court (Dckt. 108).**

Donald B. Johnson, Debtor, (“Objector”) requests that the court disallow the claim of Caraly Johnson (“Creditor”), Proof of Claim No. 2-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$228,125.72. Objector asserts that:

- Item A: Debtor contests he should not be required to pay rent to live on a property that he has a legal interest in.
- Item B: Creditor has not provided copies of any documents supporting the claim of hazardous material and trash removal from Paradise property and it is Debtor’s understanding that FEMA paid for the cleanup.
- Item C: The \$30,000.00 for Creditor’s prepayment of expected insurance proceeds to be reimbursed by Debtor will be distributed in the divorce proceeding, not this bankruptcy case.
- Item D: A judgment in California Superior Court was entered against Creditor for fraudulent transfer of Debtor’s home into her name. Debtor contends Creditor should have cross complained him if she did not believe she was responsible.
- Item E: Creditor has not provided proof of the destruction of the trailer. Additionally, it was Debtor’s belief that she gave him the trailer as a portion of his share of their community property because she signed the title releasing her interest in the property.

## **DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm* (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie* (In re Wylie), 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

## **PARTIES STIPULATION**

On December 1, 2021, Debtor filed a Stipulation to continue the hearing. Dckt. 87. The Stipulation was signed by all parties and states the hearing shall be continued again to February 10, 2022 at 10:30 a.m. Parties state a settlement is still contemplated with regard to the Proof of Claim and Objection. If the matter is not settled creditor shall have until January 27, 2022 to file any responsive pleading.

## **ORDER GRANTING STIPULATION**

On December 3, 2021, the court entered an order pursuant to the Stipulation and Joint Motion to continue the hearing. Dckt. 88. Pursuant to the order, the hearing on the Objection to Proof of Claim Number 2-1 of Creditor is continued to February 10, 2022 at 10:30 a.m. in Courtroom 33.

#### **MATTER STATUS**

The court notes no status update has been filed with the court regarding Debtor's Objection to Creditor's Proof of Claim. There is no indication that the parties settled. Additionally, Creditor has yet to file a responsive pleading, which was due by January 27, 2022. Stipulation, Dckt. 87.

#### **ORDER CONTINUING MATTER**

On February 4, 2022, the court entered an order continuing the hearing for Debtor's Objection to Proof of Claim pursuant to the Joint *Ex Parte* Motion and Stipulation for Additional Continuance. Dckts. 108, 106. The hearing is continued to April 28, 2022 at 10:30 am.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 18, 2022. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion for Allowance of Professional Fees is <del>granted</del>.</b></p>
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Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") for the Estate of Charles P Vaclavik and Katie Mae Vaclavik ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period June 30, 2020, through January 18, 2022.

#### **STATUTORY BASIS FOR FEES**

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person

employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

### **Benefit to the Estate**

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include general case administration duties, hiring professionals, claims administration, research regarding the potential asset of timeshare ownership and real property on the East Coast and participated in the negotiations of a sale agreement approved by the court, preparing monthly bank reconciliations and proper accounting and maintaining a proper bond. The Estate has \$32,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES REQUESTED**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant performed general trustee’s duties including: opening the case and entering it into the trustee’s case management software system, reviewing the petition and related schedules, reviewing the real property title report, inspection report and documents prepared by professionals, reviewing email and paper mail, hiring General Counsel and consulting a CPA. Applicant located a Realtor capable of marketing the property. Applicant researched and reviewed claims. Applicant researched the potential asset of timeshare ownership and real property on the East Coast and participated in the negotiations with Debtors to reach the sale agreement approved by the court. Applicant prepared monthly bank reconciliations and proper accounting and maintained a proper bond.

### **Applicant requests the following fees:**

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$2,700.00
<b>Calculated Total Compensation</b>	<b>\$3,950.00</b>
<b><u>Total First and Final Fees Requested</u></b>	<b>\$3,950.00</b>

## **COSTS REQUESTED**

Trustee requests costs in the amount of \$15.01. However, Trustee has failed to provide the court with any information as to how these costs were incurred. There are no exhibits and there is no breakdown of these expenses. Additionally, the court has reviewed Trustee’s Final Report, Dckt. 64, and cannot locate a breakdown of the expenses.

The court cannot “just allow” expenses for unidentified expenses. Likely, there may have been some postage or copy expenses, however, the court will not guess in the awarding of professional or trustee, or prevailing party fees and expenses.

Given that it will cost the Trustee and counsel more to provide supplemental evidence for the

\$15.01 in stated expenses, the court disallows the amount and will not have the Trustee and counsel waste their time.

## **FEES AND COSTS ALLOWED**

Final Fees in the amount of \$3,950.00 and costs in the amount of \$15.01 are not approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$32,000.00 of unencumbered monies to be administered. The Chapter 7 Trustee performed normal trustee's duties including: opening the case and entering it into the trustee's case management software system, reviewing the petition and related schedules, reviewing the real property title report, inspection report and documents prepared by processions, reviewing email and paper mail, hiring General Counsel and consulting a CPA. Applicant located a Realtor capable of marketing the property. Applicant researched and reviewed claims. Applicant researched the potential asset of timeshare ownership and real property on the East Coast and participated in the negotiations with Debtors to reach the sale agreement approved by the court. Applicant prepared monthly bank reconciliations and proper accounting and maintained a proper bond. Applicant's efforts have resulted in a realized gross of \$32,000.00 recovered for the estate. Dckt. 69.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$3,950.00
Costs and Expenses	\$ 0.00

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Kimberly J. Husted is allowed the following fees and expenses as trustee of the Estate:

Kimberly J. Husted, the Chapter 7 Trustee

Fees in the amount of \$3,950.00

Expenses in the amount of \$0.00 (the court not allowing the

requested \$15.01 in expenses)

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

3. [18-20964-E-7](#) **BRADLEY GILBREATH** **CONTINUED MOTION TO WAIVE**  
[PGM-2](#) **Peter Macaluso** **FINANCIAL MANAGEMENT COURSE**  
**REQUIREMENT, WAIVE SECTION 1328**  
**CERTIFICATE REQUIREMENT,**  
**CONTINUE CASE ADMINISTRATION,**  
**AS TO DEBTOR**  
**9-10-21 [121]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2021. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Waive Financial Management Course Requirement, Waive Section 1328 Certificate Requirement, Continue Case Administration has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Waive Financial Management Course Requirement, Waive Section 1328 Certificate Requirement, Continue Case Administration filed by Movant is granted and Jeffery Gilbreath, the deceased Debtor's son, is appointed as the successor representative of the deceased Debtor in this case.**



Peter G. Macaluso (“Movant”), the former attorney for deceased debtor, Bradley Jay Gilbreath (“Debtor”), filed this motion for omnibus relief. Movant seeks permission to proceed as though the death of Debtor has not occurred. Movant seeks to waive the 11 U.S.C. § 1328 instructional course requirement concerning personal financial management. Fn.1.

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FN. 1. The Motion is drawn stating that counsel is representing the Debtor, Bradley Gilbreath. But it also states that Bradley Gilbreath is deceased. Counsel has no client, though he may owe duties and obligation to Mr. Gilbreath’s estate, which would ultimately enforced by Mr. Gilbreath’s successor executor, administrator, or representative. Counsel does not purport to represent any successor for Debtor and none has been presented to, or appointed by, this court.  
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## DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides, “Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.”

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384. Under Federal Rule of Bankruptcy Procedure 9014, Motions are considered contested matters that apply to Federal Rule of Bankruptcy Procedure 7025.

The application of Rule 25 and Rule 7025 is discussed in Collier on Bankruptcy, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for

substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads, supra*.

Counsel for the late Debtor requested that the hearing be continued so that he could seek out assistance from applicable county agencies or impress upon an heir of the Debtor the need to be appointed as a representative so that this case may be completed through discharge for Debtor.

### **December 21, 2021 Status Report**

Debtor's Counsel provided the court with a status report on December 21, 2021. Dckt. 135. Counsel notes they have not been able to contact either the Son nor Mother of the deceased debtor. Counsel and Trustee's Counsel has met to discuss the recently filed adversary proceeding and requests the court to allow ninety (90) days for the recently filed Adversary Proceeding to be prosecuted.

### **January 6, 2022 Hearing**

Counsel for Debtor reports that he cannot locate Debtor's brother or mother. No reference is made to Debtor's widow who, as stated in the Trustee's Complaint, is continuing in possession of property of the bankruptcy estate and denying the Trustee access thereto. As of this point in time, Counsel for Debtor does not have a client, there being no successor representative being appointed.

Counsel notes that the Chapter 7 Trustee has commenced an Adversary Proceeding. That Adversary Proceeding seeks to recover property from the widow spouse of Debtor. Adv. 21-2084. The Chapter 7 Trustee (the case being converted on August 11, 2021) asserts in the case that certain real property was owned by Debtor as his sole and separate property (not community property or as joint tenants). The Plaintiff Chapter 7 Trustee is seeking to obtain possession of this property of the bankruptcy estate from the widow spouse, who has continued in possession thereof and has denied the Trustee and her professionals access to.

At the hearing, it was reported that a successor has been identified, appointment of the representative will be sought, and prosecution of the late Debtor's rights enforced.

The court notes no new documents or pleadings have been filed with the court since the January 6, 2022 hearing.

### **February 1, 2022 Supplement**

On February 1, 2022, Counsel for Debtor filed a Supplement updating the court that Jeffrey Gilbreath, son and successor of interest has come forward and the Chapter 7 Trustee is administering the assets of the estate. Dckt. 157.

### **Jeffrey Gilbreath's Declaration**

On February 1, 2022, Jeffrey Gilbreath, son of Bradley Gilbreath, filed a declaration stating they believe they will be able to perform the obligations and duties required as the successor-in-interest to Debtor. Jeffrey Gilbreath requests to be substituted as the successor-in-interest. Dckt. 158.

It appears to the court that Jeffrey Gilbreath's Declaration is attempting to act as a Motion in and of itself to substitute Debtor. Local Bankruptcy Rule 9014-1(d)(5) states that "[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules." A separate motion should be made to substitute Debtor.

Movant has improperly joined the Motion to Waive Financial Management Course with the Motion to Substitute Debtor. Jeffrey Gilbreath shall file a separate motion requesting the appropriate relief of substituting Debtor.

### **Supplemental Relief as part of the Omnibus Motion as provided in Local Bankruptcy Rule 1016-1**

A Supplement to the present Motion has been filed, which says the court should grant the Omnibus Motion. It also states that the Debtor's "son and successor in interest has come forward and the Chapter 7 is administering the assets of the estate." Supp., ¶ 5; Dckt. 157.

The Declaration of Jeffrey Gilbreath, the Debtor's son has been filed, and in it he requests that "I be allowed to be substituted in as the successor-in-interest to my deceased father in connection with the above-referenced Chapter 7 Bankruptcy case." Dec., ¶ 5; Dckt. 158.

While not clearly stated, the court construes the Supplement to state grounds for and specific relief in the form of appointment Jeffrey Gilbreath, the Debtor's son, as the successor representative for the late Debtor. L.B.R. 1016-1(b)(1).

### **RELIEF GRANTED**

The court grants the Motion and waives the requirement for the Bradley Jay Gilbreath, the late Debtor, to complete post-filing personal financial management course stated in 11 U.S.C. § 727(a)(11).

The court further orders that Jeffery Gilbreath, the son of the deceased Debtor Bradley Jay Gilbreath, is appointed as the successor representative of the Debtor in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Waive Financial Management Course Requirement, Waive Section 1328 Certificate Requirement, Continue Case Administration, as to Debtor, of Jeffery Gilbreath, the successor representative the deceased Debtor Bradley Jay Gilbreath having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Waive Financial Management Course Requirement, Waive Section 1328 Certificate Requirement, and Administration of this Chapter 7 case shall proceed notwithstanding the death of Debtor (Fed. R. Bank. P. 1016).

**IT IS FURTHER ORDERED** that Jeffery Gilbreath is appointed as the successor representative of the deceased Debtor in this Bankruptcy Case.